

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

MEDTRONIC, INC.,

Opposer,

v.

MICROVENTION, INC.

Applicant.

In re Application Serial No. 76/361,431

Published: July 9, 2002

Opposition No. _____

NOTICE OF OPPOSITION

Medtronic, Inc., a corporation organized and existing under the laws of Minnesota, and having its principal place of business at 710 Medtronic Parkway, Minneapolis, MN 55432 ("Opposer") believes that it will be damaged by registration of the mark MARINER used to identify "apparatus for transluminal cardiovascular access, navigation and therapy, namely catheters, cannulae, guidewires and delivery systems for intravascular access, navigation and therapy" in International Class 10, shown in Application Serial No. 76/361,431, and owned by MicroVention, Inc. ("Applicant"). Opposer hereby opposes the same under the provisions of Sections 2(d), 13, and 43(c) of the Trademark Act of July 5, 1946 (the "Lanham Act"), 15 U.S.C. §§ 1052(d), 1063 and 1125(c).

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As grounds of opposition, Opposer alleges that:

1. Opposer is the owner of all right, title, and interest in and to the MARINR trademark as used to identify medical instruments, namely, electrophysiology catheters. Opposer first used the MARINR mark in interstate commerce at least as early as 1994 and has used the MARINR mark continuously since then. Opposer is now using the MARINR mark in interstate commerce. Opposer is the owner of the following federal registration and application for federal registration for the MARINR mark:

Mark	Ser. No./Filing Date Reg. No./Reg. Date	Goods/Services	First Use in Commerce
MARINR	Ser. No. 74/375,100 Filed: 3/31/93 Reg. No. 1,902,150 Reg. Date: 6/27/95	I.C. 10: medical instruments, namely electrophysiology catheters.	May 30, 1994
RF MARINR	Ser. No. 78/158,108 Filed: 8/27/02	I.C. 10: medical instruments, namely electrophysiology catheters.	April 19, 1994

2. Opposer's Registration No. 1,902,150 has attained incontestable status pursuant to the provisions of Section 15 of the Lanham Act, 15 U.S.C. § 1065, and provides conclusive evidence of Opposer's right to use the MARINR mark in connection with the goods specified in the registration.

3. On January 22, 2002, Applicant filed an application for federal registration of the mark MARINER, Application Serial No. 76/361,431, for "apparatus for transluminal cardiovascular access, navigation and therapy, namely catheters, cannulae, guidewires and delivery systems for intravascular access, navigation and therapy" in International Class 10. Applicant filed its application on an intent-to-use basis. Applicant's mark was published for opposition in the *Official Gazette* of July 9, 2002.

4. Opposer timely filed requests for extensions of time to oppose Applicant's MARINER application. The opposition period is currently set to expire on November 6, 2002. Opposer timely files this Opposition.

5. By adopting and using the MARINR mark since at least as early as 1994, Opposer has acquired exclusive rights in the MARINR mark that, upon information and belief, predate any rights upon which Applicant may rely. Opposer's rights to use the MARINR mark in connection with electrophysiology catheters and related medical instruments are superior to those of Applicant.

6. The MARINR mark is symbolic of the extensive goodwill and consumer recognition that Opposer has established through substantial expenditures of time, effort, and other resources in the advertising and promotion of the goods Opposer sells under the MARINR mark.

7. As a result of Opposer's regular, extensive, and well-publicized use of the MARINR mark, the relevant consumers have come to associate this mark in the cardiac device field exclusively with Opposer.

8. As a result of Opposer's regular, extensive, and well-publicized use of the MARINR mark, upon information and belief, Opposer's mark became famous before any use of the MARINER mark by Applicant.

9. Applicant's mark is confusingly similar to Opposer's MARINR mark and identifies goods that are very closely related to, if not identical to, the goods identified by Opposer's MARINR mark. These factors, among others, lead to a likelihood of confusion, mistake or deception under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

10. In addition, Applicant's goods are closely related to Opposer's goods and, upon information and belief, are sold in the same channels of trade to the same consumers.

11. Any defect, objection or fault found with Applicant's goods would necessarily reflect upon and seriously injure the valuable reputation of Opposer's electrophysiology catheters and related medical instruments.

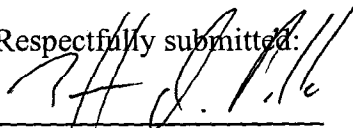
12. Registration of Applicant's mark would seriously impair the uniqueness of Opposer's MARINR mark and would diminish the strength of the mark.

13. Furthermore, Opposer also believes that it will be damaged by registration of the MARINER mark because the use and registration of the MARINER mark to identify the goods listed in Applicant's application, Serial No. 76/361,431, is likely to dilute the distinctive quality of Opposer's famous MARINR mark under Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

WHEREAS, Opposer prays this opposition be sustained and the application Serial No. 76/361,431, be refused registration.

Dated: October 22, 2002

Respectfully submitted:



Michael F. Clayton

Brett I. Miller

Shana E. Ommaya

Morgan, Lewis & Bockius LLP

1111 Pennsylvania Avenue, N.W.

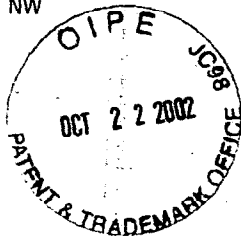
Washington, D.C. 20004

(202) 739-3000

Attorneys for Medtronic, Inc.

TTAB

Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
Tel: 202.739.3000
Fax: 202.739.3001
www.morganlewis.com



Morgan Lewis
COUNSELORS AT LAW

Brett I. Miller
202-739-5846
bmiller@morganlewis.com

October 22, 2002

VIA HAND DELIVERY

Commissioner for Trademarks
BOX TTAB FEE
2900 Crystal Drive
Arlington, Virginia 22202-3513

Attention: Trademark Trial and Appeal Board

Re: Notice of Opposition Against Application to Register MARINER
Serial No. 76/361,431
Our Ref.: 52771-0004-0078

Dear Madam:

We hereby enclose an original Notice of Opposition, plus one copy, in connection with the above-captioned application to register the MARINER mark. We also enclose a check for \$300.00 to cover the government-filing fee. Please charge any additional fees to the deposit account of Morgan, Lewis & Bockius LLP, Account No. 13-4520.

Thank you for your assistance with this matter. Please contact me if there are any questions.

Sincerely,

Brett I. Miller

Enclosures

cc: Curtis D. Kinghorn, Esq. (w/encls.)
Michael F. Clayton, Esq. (w/o encls.)
Shana E. Ommaya, Esq. (w/o encls.)

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